

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 4:05-cv-00329-JOE-SAJ
)	
TYSON FOODS, INC., et al.,)	
)	
Defendants.)	

**ANSWER OF WILLOW BROOK FOODS, INC. TO SECOND AMENDED
COMPLAINT**

Defendant Willow Brook Foods, Inc., (“WBF”), hereby answers Plaintiffs’ Second Amended Complaint (“Complaint”). WBF denies all allegations not specifically admitted herein, WBF is without knowledge or sufficient information to admit or deny any allegations pertaining to any Defendant other than WBF and therefore denies all allegations pertaining to all other Defendants, and otherwise states as follows:

I. NATURE OF THE CASE

1. Answering paragraph 1, WBF admits that it contracts with independent farmers, or “growers,” to raise turkeys on farms located within the Illinois River Watershed (“IRW”). The remainder of Paragraph 1 is introductory language to which no response is required. To the extent any response is required, WBF denies the remaining allegations in paragraph 1.

II. JURISDICTION & VENUE

2. Answering paragraph 2, WBF admits that Plaintiff purports to bring this action pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 *et seq.* (“CERCLA”), the Solid

Waste Disposal Act, 42 U.S.C. § 6972 (“SWDA”), and the federal common law of nuisance, but denies that Plaintiff has stated any claim under these laws or theories upon which relief can be granted. WBF denies all other allegations in paragraph 2.

3. WBF denies the allegations in paragraph 3.

4. WBF admits that the court has personal jurisdiction over its by virtue of its contracts with independent farmers, or “growers,” to raise turkeys on farms located within the Illinois River Watershed (“IRW”), but denies the remaining allegations in paragraph 4.

III. THE PARTIES

A. Plaintiff

5. Answering paragraph 5, WBF admits that the State of Oklahoma is a state of the United States. Further answering, WBF is without knowledge or sufficient information to form a belief as to the truth of the remaining allegations in paragraph 5, and therefore denies the same.

B. Poultry Integrator Defendants

6. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 6, and therefore denies the same.

7. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 7, and therefore denies the same.

8. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 8, and therefore denies the same.

9. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 9, and therefore denies the same.

10. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 10, and therefore denies the same.

11. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 11, and therefore denies the same.

12. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 12, and therefore denies the same.

13. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 13, and therefore denies the same.

14. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 14, and therefore denies the same.

15. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 15, and therefore denies the same.

16. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 16, and therefore denies the same.

17. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 17, and therefore denies the same.

18. Answering paragraph 18, WBF admits that it is a Missouri corporation with its principal place of business in Missouri. WBF admits that it contracts with independent growers to raise turkeys on farms located around the IRW. WBF denies all other allegations in paragraph 18.

19. Answering paragraph 19, WBF admits that in the Complaint, Plaintiffs collectively refer to all named Defendants as “Poultry Integrator Defendants,” but denies

that such characterization relieves Plaintiffs from their obligation to specifically allege and prove each allegation made in the Second Amend Complaint as to WBF individually.

20. Answering paragraph 20, WBF admits that, unless otherwise noted, Plaintiffs intend to allege each count in the Complaint against all named Defendants, but denies that Plaintiffs' approach is appropriate.

IV. FACTUAL ALLEGATIONS

A. The Illinois River Watershed

21. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 21, and therefore denies the same.

22. WBF admits that the Illinois River and its tributaries are located within the IRW, but is without knowledge or sufficient information to form a belief as to the truth of the remaining allegations in paragraph 22, and therefore denies the same.

23. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 23, and therefore denies the same.

24. WBF admits that the Illinois River and its tributaries are water resources with recreational, fishing and wildlife propagation and aesthetic values, but states that the word "outstanding" is overly vague and subjective and therefore denies the allegation in paragraph 24 that the word "outstanding" appropriates describes these resources.

25. WBF admits that the Illinois River feeds into the 12,900 acre Tenkiller Ferry Lake, but is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 25, and therefore denies the same.

26. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 26, and therefore denies the same.

27. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 27, and therefore denies the same.

28. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 28, and therefore denies the same. WBF specifically denies that it or the operations of any of its independent growers with whom it contracts are the source of any pollution or degradation in the IRW.

29. WBF denies the allegations in paragraph 29.

30. WBF denies the allegations in paragraph 30.

B. The Poultry Integrator Defendants' Domination and Control of the Actions and Activities of Their Respective Poultry Growers

31. Answering paragraph 31, WBF admits that WBF is in the business of producing turkey and/or turkey products for sale and use in the United States and internationally. WBF denies the remaining allegations in paragraph 31.

32. Answering paragraph 32, WBF admits that it is involved in the growth process of its turkeys. WBF is without knowledge or sufficient information to form a belief as to the truth of the remaining allegations in paragraph 32, and therefore denies the same.

33. Answering paragraph 33, WBF admits that it has contracts with independent growers to raise its turkeys within the IRW. WBF denies that it raises any of its turkeys itself within the IRW.

34. WBF denies all allegations in paragraph 34.

35. Answering paragraph 35, WBF admits that it contracts with growers to raise turkeys.

36. Answering paragraph 36, WBF admits that under its contracts with growers, it supplies turkeys to growers to raise the turkeys to maturity.

37. Answering paragraph 37, WBF admits that it owns the turkeys raised by the independent growers with whom it contracts.

38. Answering paragraph 38, WBF admits that it supplies the feed for the turkeys raised by the growers with whom it contracts and admits that that the content of the feed somewhat impacts the constituents of poultry manure.

39. Answering paragraph 39, WBF admits that it contracts with independent growers to raise its turkeys. Further answering, WBF admits that under the terms of these contracts, its growers are independent contractors who agree to provide the labor, utilities, supplies, housing, equipment, and water needed to care for WBF's turkeys. WBF further states that the terms of the contracts speak for themselves. WBF denies all of the remaining allegations in paragraph 39.

40. Answering paragraph 40, WBF admits that its agents have made periodic site visits to the operations of independent growers with whom it contracts. WBF denies any remaining allegations in paragraph 40.

41. Answering paragraph 41, WBF admits that it is involved in the growing process for breeder growing operations in the IRW only pursuant to the terms of its contracts with independent growers. WBF denies the remaining allegations in paragraph 41.

42. WBF denies all allegations in paragraph 42.

43. WBF denies all allegations in paragraph 43.

44. WBF denies all allegations in paragraph 44.

C. The Poultry Integrator Defendants' Poultry Waste Generation

45. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 45, and therefore denies the same.

46. WBF denies all allegations in paragraph 46.

D. The Poultry Integrator Defendants' Improper Poultry Waste Disposal Practices and Their Impact

47. WBF denies all allegations in paragraph 47. WBF further states that Exhibit 2 speaks for itself.

48. WBF denies all allegations in paragraph 48. WBF further states that Exhibit 3 speaks for itself.

49. WBF denies all allegations in paragraph 49.

50. WBF denies all allegations in paragraph 50.

51. WBF denies all allegations in paragraph 51.

52. WBF denies all allegations in paragraph 52.

53. WBF denies all allegations in paragraph 53.

54. WBF denies all allegations in paragraph 54.

55. WBF denies all allegations in paragraph 55.

56. WBF denies all allegations in paragraph 56.

57. WBF denies all allegations in paragraph 57 and its subparts.

58. WBF lacks sufficient knowledge or information to admit or deny the allegations in paragraph 58 and therefore denies the same.

59. WBF denies all allegations in paragraph 59.

60. The first sentence of paragraph 60 contains conclusions of law to which no response is required and therefore is denied. WBF is without knowledge or sufficient information to form a belief as to the truth of the remaining allegations in paragraph 60, and therefore denies the same. WBF further states that Exhibit 4 speaks for itself.

61. The first sentence of paragraph 61 contains conclusions of law to which no response is required and is therefore denied. WBF is without knowledge or sufficient information to form a belief as to the truth of the remaining allegations in paragraph 61, and therefore denies the same.

62. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 62, and therefore denies the same.

63. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 63, and therefore denies the same.

E. The Reason for This Lawsuit

64. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 64, and therefore denies the same.

65. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 65, and therefore denies the same.

66. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 66, and therefore denies the same.

67. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 67, and therefore denies the same.

68. WBF denies all allegations in paragraph 68.

V. CAUSES OF ACTION

A. Count 1: CERCLA Cost Recovery – 42 U.S.C. § 9607

69. Answering paragraph 69, WBF incorporates by reference its responses to the allegations in paragraphs 1 through 68 of the Complaint.

70. Paragraph 70 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

71. Paragraph 71 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph. Answering further, WBF states that the Complaint fails to identify any particular area or land, other than the entire 1,069,530-acre Illinois River Watershed, where hazardous substances allegedly attributable to WBF have been "deposited, stored, disposed of, or placed, or otherwise come to be located," 42 U.S.C. § 9601(9), and therefore WBF has no reasonable basis upon which to answer this allegation.

72. Paragraph 72 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

73. Paragraph 73 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

74. Paragraph 74 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

75. WBF denies all allegations in paragraph 75.

76. WBF denies all allegations in paragraph 76.

B. Count 2: CERCLA Natural Resource Damages – 42 U.S.C. § 9607

77. Answering paragraph 77, WBF incorporates by reference its responses to the allegations in paragraphs 1 through 76 of the Complaint.

78. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 78, and therefore denies the same.

79. Paragraph 79 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

80. Paragraph 80 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph. Answering further, WBF states that the Complaint fails to identify any particular area or land, other than the entire 1,069,530-acre Illinois River Watershed, where hazardous substances allegedly attributable to WBF have been "deposited, stored, disposed of, or placed, or otherwise come to be located," 42 U.S.C. § 9601(9) such that WBF has no reasonable basis upon which to answer this allegation, is without knowledge or sufficient information as to form a belief as to the truth of the allegations in paragraph 80 and therefore denies the same.

81. Paragraph 81 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

82. Paragraph 82 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

83. Paragraph 83 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

84. WBF denies all allegations in paragraph 84.

85. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 85, and therefore denies the same.

86. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 86, and therefore denies the same.

87. WBF is without knowledge or sufficient information to form a belief as to the truth of the allegations in paragraph 87, and therefore denies the same.

88. WBF denies all allegations in paragraph 88.

C. Count 3: SWDA Citizen Suit

89. Answering paragraph 89, WBF incorporates by reference its responses to the allegations in paragraphs 1 through 88 of the Complaint.

90. Answering paragraph 90, WBF admits only that it received correspondence dated March 9, 2005 as depicted in Exhibit 5. WBF is without knowledge or sufficient information to form a belief as to the truth of the remaining allegations in paragraph 90, and therefore denies the same.

91. Paragraph 91 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

92. Paragraph 92 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph .

93. Paragraph 93 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

94. WBF denies all allegations in paragraph 94.

95. WBF denies all allegations in paragraph 95.

96. WBF denies all allegations in paragraph 96.

D. County 4: State Law Nuisance

97. Answering paragraph 97, WBF incorporates by reference its responses to the allegations in paragraphs 1 through 96 of the Complaint.

98. WBF denies all allegations in paragraph 98.

99. WBF denies all allegations in paragraph 99.

100. WBF denies all allegations in paragraph 100.

101. WBF denies all allegations in paragraph 101.

102. Paragraph 102 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

103. Paragraph 103 contains conclusions of law to which no response is required and therefore WBF denies all allegations in that paragraph.

104. WBF denies all allegations in paragraph 104.

105. WBF denies all allegations in paragraph 105.

106. WBF denies all allegations in paragraph 106.

107. WBF denies all allegations in paragraph 107.

E. Count 5: Federal Common Law Nuisance

108. Answering paragraph 108, WBF incorporates by reference its responses to the allegations in paragraphs 1 through 107 of the Complaint.

109. WBF denies all allegations in paragraph 109.

110. WBF denies all allegations in paragraph 110.

111. WBF denies all allegations in paragraph 111.

112. WBF denies all allegations in paragraph 112.

113. WBF denies all allegations in paragraph 113.

114. WBF denies all allegations in paragraph 114.

115. WBF denies all allegations in paragraph 115.

116. WBF denies all allegations in paragraph 116.

117. WBF denies all allegations in paragraph 117.

F. Count 6: Trespass

118. Answering paragraph 118, WBF incorporates by reference its responses to the allegations in paragraphs 1 through 117 of the Complaint.

119. WBF denies all allegations in paragraph 119.

120. WBF denies all allegations in paragraph 120.

121. WBF denies all allegations in paragraph 121.

122. WBF denies all allegations in paragraph 122.

123. WBF denies all allegations in paragraph 123.

124. WBF denies all allegations in paragraph 124.

125. WBF denies all allegations in paragraph 125.

126. WBF denies all allegations in paragraph 126.

G. Count 7: Violation of 27A Okla. Stat. § 2-6-105 & 2 Okla. Stat. §

2-18.1

127. Answering paragraph 127, WBF incorporates by reference its responses to the allegations in paragraphs 1 through 126 of the Complaint.

128. WBF denies all allegations in paragraph 128.

129. WBF denies all allegations in paragraph 129.

130. WBF denies all allegations in paragraph 130.

131. WBF denies all allegations in paragraph 131.

H. Count 8: Violation of 2 Okla. Stat. § 10-9-7 and Oklahoma

Administrative Code § 35-17-5-5

132. Answering paragraph 132, WBF incorporates by reference its responses to the allegations in paragraphs 1 through 131 of the Complaint.

133. WBF denies all allegations in paragraph 133.

134. WBF denies all allegations in paragraph 134.

135. WBF denies all allegations in paragraph 135.

I. Count 9: Violation of Oklahoma Administrative Code, § 35-17-3-

14

136. Answering paragraph 136, WBF incorporates by reference its responses to the allegations in paragraphs 1 through 135 of the Complaint.

137. WBF denies all allegations in paragraph 137.

138. WBF denies all allegations in paragraph 138.

J. Count 10: Unjust Enrichment / Restitution / Disgorgement

139. Answering paragraph 139, WBF incorporates by reference its responses to the allegations in paragraphs 1 through 138 of the Complaint.

140. WBF denies all allegations in paragraph 140.

141. WBF denies all allegations in paragraph 141.

142. WBF denies all allegations in paragraph 142.

143. WBF denies all allegations in paragraph 143.

144. WBF denies all allegations in paragraph 144.

145. WBF denies all allegations in paragraph 145.

146. WBF denies all allegations in paragraph 146.

VI. PRAYER FOR RELIEF

This paragraph of the Complaint contains Plaintiff's request for relief, to which no response is required.

VII. JURY DEMAND

This paragraph of the Complaint contains Plaintiff's request for a jury trial, to which no response is required.

VIII. AFFIRMATIVE DEFENSES

1. The Complaint, in whole or in part fails to state a claim upon which relief can be granted against WBF, and each claim should be dismissed under Fed. R. Civ. P. 12(b)(6).

2. Counts 4 through 10 of Plaintiffs' Complaint should be dismissed for failure to state a claim for which relief can be granted, because said claims violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

3. Counts 4 through 10 of Plaintiffs' Complaint should be dismissed for failure to state a claim for which relief can be granted, because said claims violate the Dormant Commerce Clause of the United States Constitution.

4. Plaintiff's claim under federal common law is precluded because there is no federal common law that governs the acts or omissions alleged in the Complaint.

5. This Court lacks subject matter jurisdiction over some or all of Plaintiff's claims, including but not limited to Plaintiff's state law claims under 28 U.S.C. § 1367 because the Complaint fails to state a federal law claim upon which relief can be granted.

6. The Complaint should be dismissed for failing to join persons needed for a just adjudication under Fed. R. Civ. P. 19.

7. Counts 4, 5, 6 and 10 of Plaintiffs' Complaint are pre-empted by federal rules, federal regulations, common law, the United States Constitution and federalism principles inherent in the structure of the United States Constitution, and the federal statutes, including but not limited to the Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.* ("Clean Water Act").

8. Plaintiffs' claim for nuisance *per se* should be dismissed for failure to state a claim for which relief can be granted, because the land application of poultry litter within the IRW is specifically authorized by the statutes and regulations of Oklahoma.

9. Plaintiffs' state common law claims should be dismissed for failure to state a claim for which relief can be granted because the claims are pre-empted and/or barred by laws and regulations of the State of Oklahoma, including but not limited to the Oklahoma Registered Poultry Feeding Operations Act, OKLA. STAT., tit. 2 § 10-9.1 *et seq.* and the Oklahoma Concentrated Animal Feeding Operations Act, OKLA. STAT., tit. 2 § 9-201 *et seq.*, and the regulations promulgated thereunder.

10. Plaintiffs' claims are barred to the extent they rely on the retroactive application of any statute, regulation or standard of conduct.

11. Plaintiffs' claims are barred to the extent they are predicated upon conditions located on private lands, within privately owned waters, on federal lands or any condition located within Indian Country.

12. Count 9 of the Plaintiffs' Complaint should be dismissed because neither WBF nor any of the independent growers with whom it contracts operates and Confined Animal Feeding Operation as that term is defined under federal and Oklahoma law.

13. Counts 1 and 2 of the Plaintiffs' Complaint should be dismissed because WBF does not direct, manage, control or operate any poultry operation within the IRW, particularly with regard to the land application of poultry litter or decisions regarding environmental compliance.

14. Count 3 of the Plaintiffs' Complaint should be dismissed because Plaintiffs' knowledge of the alleged conditions in the IRW has continued for such a period of time as to eliminate the existence of any "imminent and substantial endangerment" as a matter of law.

15. Counts 1, 2 and 3 of the Plaintiffs' Complaint should be dismissed because poultry litter is a useful product and does not constitute waste or discarded material.

16. Counts 1, 2 and 3 of the Plaintiffs' Complaint should be dismissed pursuant to the applicable fertilizer exceptions.

17. To the extent that WBF's liability is predicated on the claims that independent turkey farmers are the servants, employees or agents of WBF, all of such claims should be dismissed for failure to state a claim for which relief can be granted because the claims are pre-empted by the provisions of the Packers and Stockyards Act, 7 U.S.C. § 181 *et seq.*

18. Plaintiffs' claims should be dismissed for failure to state a claim upon which relief can be granted because neither WBF, its predecessors, nor any companies owned by WBF is a liable party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

19. Plaintiffs' claims should be dismissed for failure to state a claim upon which relief can be granted because WBF is not a successor to any party liable or potentially liable to Plaintiff as to any claim alleged in the Complaint.

20. Plaintiffs' claim for "cost recovery" under CERCLA, 42 U.S.C. § 9601, *et seq.*, should be dismissed for failure to state a claim upon which relief can be granted because such claim is barred by the Plaintiff's status as a potentially responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

21. Plaintiffs' claims, in particular Counts 1, 2 and 3, should be dismissed for failure to state a claim upon which relief can be granted because Plaintiffs have failed to identify a "facility" at which releases of "hazardous substances" have occurred for which WBF is liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

22. WBF is not subject to liability under the Solid Waste Disposal Act ("RCRA"), 42 U.S.C. § 6972 because WBF is not an "owner" or "operator" of any "facility", nor is it a "generator" or "transporter" of "solid waste" and/or "hazardous waste" as those terms are defined therein.

23. Plaintiffs lack standing to pursue claims under the citizen suit provisions of the RCRA.

24. Some of Plaintiffs' claims are barred because Plaintiffs did not provide adequate pre-suit notice as required by 42 U.S.C. § 6972(a)(1)(B), (b)(2)(A), and 40 C.F.R. § 254.3.

25. Plaintiffs' claims, in whole or in part, are not actionable under 42 U.S.C. § 6972(b)(2)(c)(ii) and/or (iii).

26. Plaintiffs' RCRA claim is precluded by the Clean Water Act.

27. Plaintiffs' RCRA claim is barred because poultry litter used as fertilizer does not constitute "solid waste" under the RCRA.

28. Plaintiffs' CERCLA and RCRA claims are barred by the exemptions and exclusions contained in those statutes.

29. Plaintiffs are not the real party in interest as to some or all of the claims and damages asserted in the Complaint and thus lack standing to pursue their claims.

30. Each claim asserted in the Complaint should be dismissed because Plaintiffs failed to exhaust their administrative remedies.

31. Each claim asserted in the Complaint is barred by the applicable statutes of limitations, including but not limited to 42 U.S.C. § 9613(g)(2).

32. An award of punitive damages is prohibited by the Constitution of the United States and the Constitution of Oklahoma, as well as *BMW of North America v. Gore*, 517 U.S. 559 (1996).

33. Each of Plaintiffs' claims is barred by the equitable doctrines of laches, unclean hands, and in pari delicto.

34. Each of the Plaintiffs' claims is barred by the equitable doctrines of estoppel, waiver and consent by virtue of the State of Oklahoma's regulatory oversight of the land application of poultry litter in the IRW, coupled with the State of Oklahoma's failure to advise WBF or any independent grower with whom it contracts that any of their conduct had, is or will result in any natural resource injury whatsoever.

35. Plaintiffs' claims, in whole or in part, are barred because Plaintiffs failed to mitigate their alleged damages.

36. Plaintiffs' claims, in whole or in part, are barred under the doctrines of comparative or contributory fault and/or negligence because Plaintiffs' acts or omissions caused or contributed to cause the damages alleged in the Complaint.

37. Plaintiffs lack standing to assert some or all of the claims in the Complaint, including but not limited to Plaintiffs' request for damages or injunctive relief with respect to "natural resources" owned or held in trust for Indian Tribes.

38. Some or all of Plaintiffs' claims present a political question and, therefore are not amenable to judicial resolution.

39. Some or all of Plaintiffs' claims against WBF are barred by the primary jurisdiction doctrine and the authority of the Oklahoma Department of Environmental Quality, the Oklahoma Department of Agriculture, Food and Forestry, and other Oklahoma state agencies.

40. The costs and damages averred by Plaintiffs in the Complaint are unnecessary and/or inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

41. WBF has not joined all party/parties at fault for their alleged injuries. WBF reserves its right at trial to seek an allocation of fault to, and contribution from, such party/parties.

42. To the extent Plaintiffs have sustained any damages, such damages were caused by the acts and/or omissions of third parties over whom WBF has no control or right of control and for whose conduct WBF is not responsible.

43. Plaintiffs are not entitled to recover costs of prosecuting this action or attorneys' fees that they have incurred or may incur in the future.

44. Plaintiffs are not entitled to recover the damages sought and cannot prove the damages sought.

45. Counts 3 through 10 of Plaintiffs' Complaint must be dismissed under *New Mexico v. General Electric*, 467 F.3d 1223 (10th Cir. 2006).

46. Count 6 of Plaintiffs' Complaint must be dismissed for failure to state a claim for which relief can be granted because Plaintiffs have failed to identify any lands or property over which they assert exclusive ownership or possessory interests, nor have Plaintiffs asserted any conduct on the part of WBF, which they contend resulted in any trespass.

47. Upon information and belief, at all times relevant, WBF and the growers with whom WBF contracted to raise turkeys were in compliance with all environmental, health and safety statutes and obtained all necessary permits.

48. WBF reserves its right to assert further affirmative defenses which are subsequently revealed during discovery or that are otherwise determined to be appropriate.

49. WBF adopts and asserts any affirmative defenses raised or asserted by other Defendants to this action that are also applicable to WBF.

WHEREFORE, WBF prays for relief as follows:

1. That the Complaint be dismissed with prejudice and Plaintiff be awarded nothing thereby;
2. For costs of suit herein;
3. For its attorneys' fees and expenses; and
4. For such other and further relief as the Court deems just and proper.

Respectfully submitted,

/s/ Jennifer S. Griffin

JENNIFER S. GRIFFIN, *appearing pro hac vice*
DAVID G. BROWN, *appearing pro hac vice*
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ATTORNEYS FOR DEFENDANT,
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-and-

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of August, 2007, I electronically transmitted the foregoing document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

Jo Nan Allen	Frederick C. Baker	Tim K. Baker
Douglas L. Boyd	Vicki Bronson	Paula M. Buchwald
Louis W. Bullock	Lloyd E. Cole, Jr.	Angela D. Cotner
John Breian DesBarres	W. A. Drew Edmondson	Delmare R. Ehrich
John Elrod	William B. Federman	Bruce W. Freeman
Ronnie Jack Freeman	Richard T. Garren	D. Sharon Gentry
Tony M. Graham	James M. Graves	Michael D. Graves
Thomas J. Grever	Jennifer S. Griffin	Carrie Griffith
John T. Hammons	Jean Burnett	Michael T. Hembree
Theresa Noble Hill	Philip D. Hixon	Mark D. Hopson
Kelly S. Hunter Burch	Stephen L. Jantzen	Mackenzie Hamilton Jessie
Bruce Jones	Jay T. Jorgensen	Krisann C. Kleibacker Lee
Raymond T. Lay	Nicole M. Longwell	Dara D. Mann
Linda C. Martin	A. Scott McDaniel	Robert Park Medearis, Jr.
James Randall Miller	Robert A. Nance	John Stephen Neas
George W. Owens	David Phillip Page	K. Clark Phipps
Marcus N. Ratcliff	Robert P. Redemann	M. David Riggs
Randall E. Rose	Patrick Michael Ryan	Robert E. Sanders
David Charles Senger	William F. Smith	Jennifer F. Sherrill
Colin H. Tucker	John H. Tucker	R. Pope Van Cleef, Jr.
Kenneth E. Wagner	David A. Walls	Elizabeth C. Ward
Sharon K. Weaver	Timothy K. Webster	Gary V. Weeks
Adam Scott Weintraub	Terry W. West	Dale Kenyon Williams, Jr.
E. Stephen Williams	Douglas Allen Wilson	J. Ron Wright
Lawrence W. Zeringue	Bobby Jay Coffman	Laura Samuelson
Reuben Davis		

and I further certify that a true and correct copy of the above and foregoing will be mailed via first class U.S. Mail, postage properly paid, on the following who are not registered participants of the ECF System:

C. Miles Tolbert Secretary of the Environment	William H. Narwold MOTLEY RICE LLC
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<p>State of Oklahoma 3800 N. Classen Oklahoma City, OK 73118 PLAINTIFF</p> <p>Dustin McDaniel Justin Allen Office of the Attorney General of Arkansas 323 Center Street, Suite 200 Little Rock, AR 72201-2610 COUNSEL FOR THE STATE OF ARKANSAS AND THE ARKANSAS NATURAL RESOURCES COMMISSION</p>	<p>20 Church Street 17th Floor Hartford, CT 06103</p> <p>ATTORNEYS FOR PLAINTIFF</p> <p>Thomas C. Green Sidley Austin Brown & Wood L.L.P. 1501 K Street NW Washington, DC 20005 COUNSEL FOR TYSON FOODS, INC., TYSON POULTRY, INC., TYSON CHICKEN, INC. AND COBB- VANTRESS, INC.</p>
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/s/ Jennifer S. Griffin

Jennifer S. Griffin